

SCHERTLER ONORATO MEAD & SEARS

April 9, 2024

VIA ECF

Hon. Sidney H. Stein
United States District Judge
Southern District of New York
500 Pearl Street, Courtroom 23A
New York, NY 10007

**Re: *United States v. Robert Menendez et al.*, Case No. 1:23-cr-00490-SHS
Motion to Adjourn Trial Date as to Defendant Nadine Menendez**

Dear Judge Stein:

On behalf of our client, Nadine Menendez, we write to request an adjournment of the May 6, 2024, trial date with respect to Ms. Menendez. Ms. Menendez was recently diagnosed with a serious medical condition that will require a surgical procedure in the next four to six weeks as well as possibly significant follow-up and recovery treatment. Given her medical circumstances, Ms. Menendez is not able to assist her counsel in preparing for trial in the next four weeks. Nor would Ms. Menendez be in a physical or psychological condition to participate in a six-week trial beginning on May 6, 2024. See the attached supporting declaration, attached as ***Exhibit A*** and filed under seal to protect Ms. Menendez's privacy interests.

"Whether a defendant's physical condition is so poor as to require a continuance or severance is . . . [a] decision . . . reserved to the sound discretion of the district Judge." *United States v. Al Fawwaz*, 67 F. Supp. 3d 581, 587 (S.D.N.Y. 2014) (quoting *Bernstein v. Travia*, 495 F.2d 1180, 1182 (2d Cir. 1974)). Courts consider the following factors in determining whether a defendant's physical condition warrants a continuance and/or severance: (1) medical evidence and judgments; (2) evidence of defendant's activities; (3) the possibility of measures to minimize the risks to defendant's health in a trial; (4) the temporary or permanent character of the physical problem and usefulness of delay; and (5) the seriousness of the case. See *Al Fawwaz*, 67 F. Supp. 3d at 587; *United States v. Doran*, 328 F. Supp. 1261, 1263 (S.D.N.Y. 1971); *United States v. Jones*, 876 F. Supp 395, 398 (N.D.N.Y. 1995). As set forth in the supporting declaration, attached as ***Exhibit B*** and filed under seal, these factors uniformly support a continuance of the trial as to Ms. Menendez.

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Due to the present uncertainty as to the full extent of medical treatment that Ms. Menendez will require, Ms. Menendez requests that the Court set a status hearing eight weeks from this date for Ms. Menendez to provide the Court with an update on her medical condition and treatment plan and on a feasible timetable for rescheduling her trial date.

Respectfully submitted,

/s/David Schertler

David Schertler

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